JD(SF)–56–04
San Francisco, CA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SAN FRANCISCO BRANCH OFFICE
DIVISION OF JUDGES

UNITED STATES POSTAL SERVICE

and **Case No. 20-CA-31473**

AMERICAN POSTAL WORKERS UNION, AFL-CIO, SAN FRANCISCO LOCAL

Margaret M. Dietz, Esq., of San Francisco, CA
appearing on behalf of the General Counsel

Larry F. Estrada, Esq., of San Francisco, CA,
appearing on behalf of Respondent

Karen Wing, of San Francisco, CA,
appearing on behalf of the Charging Party

DECISION

BURTON LITVACK: ADMINISTRATIVE LAW JUDGE

Statement of the Case

The unfair labor practice charge in the above-captioned matter was filed by the American Postal Workers Union, AFL-CIO, San Francisco Local, herein called the Local Union, on September 12, 2003.[1] After an investigation, on October 10, 2003, the Acting Regional Director of Region 20 of the National Labor Relations Board, herein called the Board, issued a complaint, alleging that the United States Postal Service, herein called Respondent, had engaged in, and continues to engage in, unfair labor practices within the meaning of Section 8(a)(1) and (5) of the National Labor Relations Act, herein called the Act.[2] Respondent timely filed an answer, essentially denying the commission of the alleged unfair labor practices. Based upon a notice of hearing, this matter came to trial before the above-named administrative law judge on November 19, 2003 in San Francisco, California. At the hearing, all parties were afforded the opportunity to call and examine witnesses; to cross-examine opposing witnesses, to offer into the record any relevant documentary evidence, to argue their respective legal positions orally, and to file post-hearing briefs. Counsel for the General Counsel and counsel for Respondent filed such post-hearing briefs, and each brief has been carefully scrutinized. Accordingly, based upon the entire record herein, including the post-hearing briefs and my observation of the testimonial demeanor of the several witnesses, I make the following:

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[1] Unless otherwise stated, all dates herein occurred during calendar year 2003.

[2] Counsel for the General Counsel was permitted to amend the complaint at the hearing, adding an additional allegation of unlawful conduct by Respondent.

FINDINGS OF FACT

I. Jurisdiction

Respondent provides postal services for the United States of America and operates various facilities throughout the United States in the performance of that function, including its facilities in San Francisco, California. Respondent admits that the Board has jurisdiction over it and over this matter by virtue of Section 1209 of the Postal Reorganization Act, herein called the PRA.

II. Labor Organizations

Respondent admits that, at all times material herein, the American Postal Workers Union, herein called the APWU, and the Local Union have been labor organizations within the meaning of Section 2(5) of the Act and that, at all times material herein, the Local Union has been an agent of the APWU within the meaning of Section 2(13) of the Act.

III. The Issues

The instant complaint alleges, and the General Counsel contends, that Respondent engaged in acts and conduct, violative of Section 8(a)(1) and (5) of the Act, by, from on or about May 16 until September 19, unreasonably delaying in furnishing the Local Union with a list of the hiring dates for certain Tour 2 casual employees at its Daly City, California International Service Center (ISC) and by, since on or about May 16, failing and refusing to furnish the Local Union with a list of the work assignments for certain Tour 2 casual employees at its said ISC. Respondent denied the commission of the alleged unfair labor practices.

IV. The Alleged Unfair Labor Practices

A. <u>The Facts</u>

The record reveals that, within its San Francisco District, Respondent operates numerous mail processing facilities in the San Francisco, California area, including its International Service Center (ISC), located in Daly City, and its Processing and Distribution Center (P&DC), located in San Francisco and that its labor relations and human resources personnel services departments are respectively located on the third and first floors of the P&DC. Deborah Perez, whom Respondent admitted is its agent within the meaning of Section 2(13) of the Act, is in charge of the human resources personnel services department, and she supervises the work of five human resources specialists and two personnel clerks. The record further reveals that Respondent and the APWU have had a long-standing collective-bargaining relationship with the latter acting as the exclusive representative of Respondent's clerks, including distribution clerks, motor vehicle operators, and automotive mechanics, who are classified as either full-time regulars, part-time employees assigned to regular schedules, and part-time employees assigned to flexible schedules (PTFs); that all other employees of Respondent, including casual employees, who are defined as non-career employees hired as supplemental work force,[3] and so-called transitional employees, are excluded from the

[3] Pursuant to the parties' existing collective-bargaining agreement, in a calendar year, Respondent may only employ a casual employee for two 90-day terms and during the Christmas period for no more than 21 days.

bargaining unit represented by the APWU; and that, pursuant to the terms of its existing collective-bargaining agreement with Respondent, the APWU has designated the Local Union, whose geographic jurisdiction encompasses Respondent's facilities in the San Francisco area, to be its representative for the purposes of processing and arbitrating certain grievances and bargaining over certain local issues involving unit employees employed at Respondent's facilities in the San Francisco, California area, including the ISC.

Karen Wing works for Respondent at the ISC in the airmail section as an airmail records clerk. Wing, a full-time employee on Tour 2, the swing shift, is a member of the APWU and has been a shop steward for the Local Union for 25 years. There is no dispute that, on May 16, Wing submitted, by fax, a two-page typewritten information request to Respondent. The first page of the information request appears to be a form, utilized by the Local Union for such requests, and, on it, in a space headed "nature of request," Wing stated "casuals in lieu of" and, under the heading "Request for information & documents relative to processing a grievance," Wing requested, "Hiring dates and work assignments for the following list of ISC Tour 2 casuals (see attached list)." The second page contains a list of 38 names under the heading "ISC Tour 2 Casuals" and bears the date 4/28/03. Wing addressed the information request to Deborah Perez and inserted the latter's fax number, and, on May 16, faxed the two pages to Perez at the indicated fax number. The information request itself does not specify a time period for the information; however, Wing explained, "I was seeking work assignments for the amount of time the casuals were employed. Because I know that some casuals come in at different times. They're hired at different 90-day periods. So I wanted to know where these casuals were working." Other than her testimony at the instant trial, there is no record evidence that Wing ever explained the timeframe for her information request to Perez or any other management representative for Respondent. As of June 20, according to Wing, she had not received any of the information which she had requested, and neither Perez nor any other management official from Respondent had contacted her, asserting that the May 16 information request was either vague, ambiguous, burdensome, or overly broad. In these circumstances, Wing testified, on June 20, inserting the message "Second Request 6/20/03" at the top of the information request form, she again faxed the two-page information request, General Counsel's Exhibit No. 3, to Deborah Perez at the latter's fax number.[4]

Regarding her rationale for requesting the above-described information from Respondent, in accord with what she stated on the request form, Wing explained that Article 7 of the parties' collective-bargaining agreement prohibits use of casual employees by Respondent ". . . in place of full-time or part-time employees" and that "in lieu of" is defined as prohibiting Respondent from "hir[ing] casuals to work where they should normally have full-time or part-time flexible employees working." Specifically concerning the hiring dates of the listed casual employees, she stated that the Local Union required this information to establish ". . . how many times that these casuals had been hired" as there are limited times during a calendar year during which casuals may be hired. She added that casuals are ". . . supposed to be hired when there's a high volume of mail . . . or . . . when there's a crucial time or when there's a lot of mail" such as to and from the armed forces in Iraq. Rather than working for temporary periods at the ISC, "it appeared that [casuals] were working all year round . . . in various work assignments." If working more often than usual and in excess of 40 hours a week, "then we would say that they are no longer supplementary." As to their work assignments, Wing explained that such information was necessary given the contractual "in lieu of" provision-- "We

[4] No fax transmission report exists to establish that such a document was sent by fax, to Respondent on June 20. Further, the instant unfair labor practice charge fails to refer to a second information request.

have seen casuals working areas that we believe should be for career full-time and part-time employees, as we see them constantly working there." Thus, according to Wing, the Local Union's aim in requesting information regarding the casuals was twofold-- to ensure that career employees received "their fair share of work. . . . Meaning that they get the [40] hours" and to ensure that, if casuals were being used in the suspected fashion, Respondent subjected them to the same "hiring procedures" used for hiring career employees. Asked what, potentially, Local Union officials would do with the information if their suspicions were confirmed, Wing said, "Well, we would [file a grievance]."

Deborah Perez, who confirmed that her office fax number is the same as that which Wing wrote on her information request form, admitted that, on May 16, she received Wing's two-page information request; that she read it and recognized it as an information request and that, following her standard procedure after receiving information requests from the Local Union, she personally delivered the request to a clerk in the labor relations department in order for it to be logged in by the latter department. Shortly thereafter, the labor relations department assigned Perez the task of retrieving the requested information by returning Wing's information request along with an attached routing slip, which is dated 5-20-03 and which, at the bottom, bears a log number (ISC 14) and due date (5/27/03). Perez testified that she found the returned information request in her office in-box and that "I gave the request to Michael Alaniz, who assists our office in hiring casuals. And I advised him to fill this request, whatever was given to us to obtain the information. I asked him to make sure that he responded to the Union."

Michael Alaniz, a human resources specialist in Respondent's employment unit, testified that Deborah Perez gave him Wing's May 16 information request and the attached routing slip "in late May, early June" and told him "to initiate the action as requested."[5] More specifically, according to Alaniz, his assignment was "to provide the union with the information as requested on the hiring dates and assignments for Tour 2 casuals . . . ." However, when asked what his instructions were once he generated the requested material, Alaniz contradicted Perez-- "There were no instructions on what to do with the material."[6] He further testified that, while immediately commencing to research Wing's request, he required "at least a week to compile the requested information," and he identified General Counsel's Exhibit 4(c) as the documents, which contain all the material he retrieved in response to Wing's information request. With regard to said documents, the record reveals that each page contains information regarding an individual, whose name is on the list which was attached to Wing's May 16 information request; that, on each document, there are four columns of figures under the headings "job slot ID," "Inst ID," "Begin Date," and "End Date;" that the numbers under "job slot ID" and "Inst ID" are codes; that the codes under "job slot ID" refer to casual job positions and the codes under "Inst ID" refer to the ISC; and that the information on each line of a document establishes that the particular individual was hired as a casual at the ISC during a particular period of time. Notwithstanding being aware the Local Union had requested work assignments for each causal, Alaniz conceded that someone viewing the document would not know the job or jobs each casual performed during the times he or she was working for Respondent as a casual at the ISC. As to whether he should have retrieved information showing the specific jobs each casual worked during his or her periods of employment, Alaniz insisted, "[B]ased on what I read, I interpreted

[5] Alaniz testified that, prior to joining the employment unit, he had worked on "numerous" Local Union information requests but "nothing of this nature."

[6] In the past, according to Alaniz, he had been instructed to retrieve material pursuant to Local Union information requests, and what he did with the material "depend[ed] upon what the supervisor instruct[ed] me to do . . . . In some cases, the supervisor has asked me to send it. Other times, they've asked me to respond back to the supervisor with the information."

[Wing's] request . . ." and ". . . they were asking for all work assignments . . . which [General Counsel's Exhibit 4(c)] does list." In this regard, Alaniz argued that work assignments meant whether the employees were casuals, their dates of hire, and the length of "time they worked for." As to whether work assignments referred to specific jobs, Alaniz said, "I did not interpret it that way. . . . To me it was a vague request, and if there was other information . . . . they [c]ould always call me . . ." and specify what they wanted. Regarding who would have been responsible for contacting him, Alaniz said, "The Union, the person making the request . . ." as the Local Union had made similar inquiries in the past. He was able to recall "four" such requests, including one for "specific work assignments" for a group of casuals, a request which he interpreted very clearly as requiring him to retrieve information concerning the employees' particular jobs. Asked how one could discover the casuals' specific jobs, he stated, "Well, it would need a little bit more research. Based on the way I interpreted the request-- it said hiring dates and work assignments. The only way our system can compile that information is through the area that I did . . ." and "I could only tell that he was a casual employee." Alaniz then conceded that Respondent does maintain records concerning what jobs an employee performs while working for it, "but that would come from the specific facility that they worked at," and "it has to come from in-plant support," which he defined as the unit for Respondent "that monitors the hiring . . . so that we abide by the union contract." Alaniz estimated that, if he had attempted to trace each job held by each of the listed casuals during every time he had worked for Respondent at the ISC, "I'd have still been working on it . . . . That's how long it would take me . . . . at least 30 days." Finally, in these regards, there is no record evidence that Alaniz ever contacted Wing as to whether her request for work assignments meant specific jobs or that he informed Wing that she should contact in-plant support at the ISC for such information.

In any event, upon generating the information contained in General Counsel's Exhibit 4(c), Alaniz placed the documents in Perez' mail in-box. While confirming that she found a packet, consisting of the labor relations department's routing slip, Wing's May 16 information request, and documents generated pursuant to said request, in her office mail box sometime "prior" to June 20, Perez testified that, having placed her "trust" in Alaniz to fill the request, ". . . I felt . . . he sent it to the union."[7] Therefore, according to Perez, she believed what she received from Alaniz ". . . was just my file copy," and, as a result, on June 20, after affixing her signature and the date to the routing slip and, also, to the bottom of the information request, she placed the entire packet in an office folder, "which has all of my union requests." Asked if she ever received a copy of Wing's information request bearing the words and date "Second Request 6/20/03" at the top, Perez replied, ". . . I don't recall seeing that" in June, July, or August. Perez further testified that she heard nothing more with regard to the Local Union's information request until September 19, one week after the latter filed its unfair labor practice charge in this matter. On that date, she received a telephone call from Nadine Ward, a labor relations department employee, who advised Perez that Respondent had not yet complied with Wing's information request.[8] Thereupon, believing she was responding to the May 16 information request, Perez went to her office file, located the documents, which Alaniz had compiled, and mailed them to Jefferey Dumaquit, the Local Union's clerk craft director, "because on the original request from Ms. Karen Wing, there's no indication of an address or even a telephone number where I can contact her." Subsequently, she spoke to Alaniz as to what happened, ". . . and he advised me that he gave me the information" for me to send to the Local Union. In these circumstances, Perez blamed Respondent's delay in responding to Wing's request on internal

[7] Perez conceded that she never spoke to Alaniz in order to confirm that he sent the requested information to the Local Union.

[8] I note that the Local Union's unfair labor practice charge bears only one date for its information request-- April 16.

"miscommunication."

Asked if she ever became aware that the Local Union considered the information, which she provided, to be an "incomplete response" to Wing's request, Perez replied that, in November, she received a letter, written by counsel for the General Counsel, from Respondent's law department, advising Respondent that the information, which Perez had provided to the Local Union, ". . . was not clear as a work assignment."[9] In this regard, echoing Alaniz, Perez was emphatic that the information, provided to the Local Union, does indicate employee work assignments-- "To me, this is a document that indicates a job assignment and hire dates." Thus, she stated that the information in the two left hand columns sets forth an employee's job assignment and the location at which he or she worked. However, later, when asked if the codes in the left-hand columns referred to particular jobs, Perez replied, "No. . . . That's a particular job as a casual." She added that the codes only mean that the job assignment is as a casual for Respondent and that "what I should have done, and I'll be straight here, is referred her to the supervisor for a work assignment because I don't have that knowledge from my position." In the foregoing circumstances, asked again how could she believe she had completely responded to Wing's information request, Perez stated, "Well, to me that's telling them that they're a casual. . . . To me that's a work assignment. If Ms. Perez felt that wasn't clear enough to her, feel she should have called me."

Wing testified that she did not receive the information, which Perez provided to the Local Union, until approximately September 23 or 24. She immediately examined the documents and, discovering that the documents contained hiring dates and unexplained codes, formed the opinion that Respondent had been only "partially" responsive to her information request, failing to provide information regarding work assignments for the requested employees. Conceding that she never telephoned Deborah Perez to express her disapprobation as to the sufficiency of the latter's response,[10] Wing, instead, took the packet of documents to the ISC in order to confer with other shop stewards regarding the sufficiency of the material. However, because several were "busy with lots of grievances," a week or two "probably" passed by before Wing actually discussed the material with other stewards, and, then, more than a month after receiving the documents from Perez, Wing telephoned a human resources specialist for Respondent, Arlene Romero, who informed her as to the meaning of the codes under the headings on the documents, "job slot ID" and "Inst ID." Finally, Wing asserted that it was "possible" for Respondent to have provided information pertaining to the specific jobs, which had been performed by the casual employees listed in her request. Thus, she identified a document, General Counsel's Exhibit No. 6, which is pinned to the bulletin board in the Tour office and which contains a list of operation codes corresponding to the jobs performed by employees, and another document, General Counsel's Exhibit No. 5, which she obtained from a supervisor and which contains a list of career, full-time employees. Said document ". . . show[s]

[9] Apparently, on her own initiative and unsolicited by the Charging Party, on November 6, counsel for the General Counsel wrote to counsel for Respondent regarding the information, which Perez had provided to the Local Union on September 19. Noting that the information merely informed the Local Union that the specified individuals had worked as casuals for Respondent during certain time periods, she wrote that the information failed to list work assignments, which information Wing had requested. In these circumstances, she wrote that the Local Union ". . . is not satisfied that the information on work assignments had been provided" and requested Respondent's counsel's position ". . . as to whether the requested work assignment information was supplied."

[10] According to Wing, she did not communicate with Ms. Perez at any time between September 24 and the day of the hearing.

where [each] person's working" by use of one of the operation numbers found on General Counsel's Exhibit No. 6.

Based upon counsel for the General Counsel's November 6 letter, Respondent finally was made aware that the Local Union was dissatisfied with Perez' response to Wing's information request. Given the letter by Respondent's counsel, Perez immediately contacted Respondent's in-plant support office and the latter ". . . provided me the information which was requested . . . ."[11] Perez drafted the information in the form of a letter, dated November 19, the date of the instant hearing, and Michael Alaniz handed the document to Wing prior to the start of the trial. Said document, Respondent's Exhibit 2(b), states that all employees, listed in the information request, worked as casuals in the military manual racks at the ISC as "it was during this period when the military mail volume increased . . . ." According to Perez, her letter ". . . actually shows exactly that the employees on the attached list, the casual employees, worked in the military manual racks, which is a job assignment at the [ISC]." I note that no time period is mentioned on the document, and, in this regard, Perez stated that, based upon the date on the second page of Wing's information request, her request to in-plant support was for the casuals' job assignments from April 28 to the present. Asked whether she found the information, provided in Respondent's Exhibit 2(b) to be sufficient to fulfill her information request, Wing said, ". . . I don't feel it really answers my request for work assignments" as the document is "not clear" regarding the time period covered and the amount of daily hours spent working in the military manual racks. Moreover, according to Wing, from April 28 to the date of the hearing, she had personally observed some of the listed casuals ". . . working other positions besides just the military manual racks."

B. Legal Analysis

As stated above, the General Counsel alleges that Respondent acted in violation of Section 8(a)(1) and (5) of the Act in two respects-- by unreasonably delaying from May 16 through September 19 in furnishing to the Local Union the hiring dates for certain ISC Tour 2 casual employees and by, since May 16, failing and refusing to provide to the Local Union a list of all the work assignments for certain ISC Tour 2 casual employees. At the outset, I note that most of the significant facts herein are not in dispute; that, in particular, Respondent admits the Local Union filed a request for information on May 16 and Deborah Perez admitted receiving a two-page information request from a Local Union shop steward on May 16; and that the only disputed fact is whether Karen Wing, on behalf of the Local Union, filed a second, identical information request on June 20. In the latter regard, while Wing asserted that she sent a second request for information to Deborah Perez, by fax, on June 20 and while the latter was unable to recall, but failed to specifically deny, receiving such a fax transmission, there exists no corroboration for Wing's testimony. Thus, the latter admitted that no fax transmission report exists to corroborate the sending of such a document, by fax, to Respondent on June 20, and the instant unfair labor practice charge, filed on September 12, does not refer to a second information request. In these circumstances, while Wing did not appear to be a disingenuous

[11] Asked, if Perez may have been under the impression that, as she failed to inform Perez regarding the Local Union's concerns about the sufficiency of the information, what was given to the Local Union satisfied the information request, Wing said, "I didn't contact her to notify her that I wasn't happy with the information, so I guess . . . . she could have believed that she fulfilled it."

witness, I am not persuaded, and I can make no finding, that either an information request, marked "second request 6/20/03" was sent to Perez, at the fax number, set forth on General Counsel's Exhibit No. 3, or was received by her on June 20.

However, I reiterate that there exists no dispute as to the May 16 information request, and, likewise, there is no dispute as to the applicable Board law. Thus, it has long been established that, generally, an employer is under a statutory obligation to provide information, upon request, to a labor organization, which is the collective-bargaining representative of its employees, if there is a probability that the information is necessary and relevant for the proper performance of the labor organization's duties in representing the bargaining unit employees. NLRB v. Acme Industrial Co., 385 U.S. 432 (1967); NLRB v. Truitt Mfg. Co., 351 U.S. 149 (1956); Sands Hotel & Casino, 324 NLRB 1101, 1109 (1997); Aerospace Corp., 314 NLRB 100, 103 (1994). This duty to provide information encompasses not only material necessary and relevant for the purpose of contract negotiations but also information necessary for effects bargaining and for the administration of a collective-bargaining agreement, including information required by the labor organization to process a grievance. Acme Industrial, supra; Postal Service, 337 NLRB 820, 822 (2002); Sands Hotel, supra; Bacardi Corp., 296 NLRB 1220 (1989); Challenge-Cook Bros., 282 NLRB 21, 28 (1986). The standard for relevancy is a "`liberal discovery-type standard,'" and the sought-after evidence need not be necessarily dispositive of the issue between the parties but, rather, only of some bearing upon it and of probable use to the labor organization in carrying out its statutory responsibilities. Postal Service, supra; Aerospace Corp., supra; Bacardi Corp., supra; Pfizer, Inc., 268 NLRB 916 (1984).[12] In this regard, in the case of a possible grievance, the Board does not pass upon the merits, and the labor organization is not required to demonstrate that the information is accurate, nonhearsay, or even, ultimately reliable. Postal Service, supra. "The Union is entitled to the information in order to determine whether it should exercise its representative function in the pending matter, that is, whether the information will warrant further processing of the grievance or bargaining about the disputed mater." Ohio Power Co., 216 NLRB 987, 991 (1975), enfd. 531 F.2d 1381 (6th Cir. 1976). Further, necessity is not a guideline itself but, rather, is directly related to relevancy, and only the probability that the requested information will be of use to the labor organization need be established. Bacardi Corp., supra. Moreover, information, which concerns the terms and conditions of employment of the bargaining unit employees is deemed "so intrinsic to the core of the employer-employee relationship" that such is held to be presumptively relevant. Sands Hotel, supra; Aerospace Corp., supra; York International Corp., 290 NLRB 438 (1988), quoting Southwestern Bell Telephone Co., 173 NLRB 172 (1968). When material is presumptively relevant, the burden shifts to the respondent to establish a lack of relevance. Newspaper Guild Local 95 (San Diego) v. NLRB, 548 F. 2d 863, 867 (9th Cir. 1977). However, information, which does not concern the terms and conditions of employment of bargaining unit employees, is not presumptively relevant, and the labor organization "must therefore demonstrate the relevance of such information." Maple View Manor, Inc., 320 NLRB 1149 at n. 2 (1996); Miami Rivet of Puerto Rico, 318 NLRB 769 (1995). "A [labor organization] has satisfied its burden when it demonstrates a reasonable belief supported by objective evidence for requesting the information." Shoppers Food Warehouse, 315 NLRB 358, 359 (1994); United States Postal Service, 310 NLRB 391 (1993); Knappton Maritime Corp., 292 NLRB 336 (1988). In addition to an employer's duty under the Act to

[12] Notwithstanding that a labor organization's request for information may be overly broad, to the extent that said request seeks relevant information, the employer must comply with a request for said information as if it were the sole subject of the request and the fact of an overly broad request is no excuse for failure to comply. Westwood Import Company, Inc., 251 NLRB 1213, 1227 (1980).

provide necessary and relevant information to a labor organization, "an unreasonable delay in furnishing such information is as much a violation of the Act as a refusal to furnish the information at all." Postal Service, 332 NLRB 635, 640 (2000); Valley Inventory Service, 295 NLRB 1163, 1166 (1989). In Allegheny Power, 339 NLRB No. 77 at slip. op. 3 (July 11, 2003), the Board held that, for determining whether an employer has unlawfully delayed in responding to an information request, it will consider ". . . the totality of the circumstances surrounding the incident." Noting that the concept of unreasonable delay is not susceptible of a *per* se rule, the Board holds that, "what is required, by the employer, is a good faith effort to respond to the request as promptly as circumstances allow." Id; Good Life Beverage Co., 312 NLRB 1060, 1062 at n. 9 (1993). Further, in evaluating the promptness of the employer's response, the Board will consider ". . . the complexity and extent of information sought, its availability, and the difficulty in retrieving the information." Allegheny Power, supra; Samaritan Medical Center, 319 NLRB 392, 398 (1995); Postal Service, 308 NLRB 547 (1992).

Wing's information request was for the hiring dates and work assignments for certain ISC Tour 2 casual employees, and counsel for Respondent denied that said information was either necessary or relevant to the Local Union's performance of its duties as the agent for the APWU, the exclusive representative for the bargaining unit employees. Casual employees are not included in the bargaining unit, which is represented by the APWU. Therefore, the material sought by Wing in her May 16 information request was not presumptively relevant, and the burden became that of the Local Union to establish the relevancy of the information, which it requested. On this point, Wing wrote on her information request that the nature of the Local Union's allegation was "casuals in lieu of," which the parties' collective-bargaining agreement defines as specifically prohibiting Respondent's from using casuals to work where it should normally have full-time or part-time flexible employees working. In this regard, she testified that the casuals' hiring dates were necessary to establish the number of times each listed individual worked, for the collective-bargaining agreement limits the number of times and periods during which casuals may work in a calendar year and the Local Union possessed evidence that some were working the entire year. Further, according to Wing, the relevancy of the casuals' work assignments was that "we have seen casuals working areas that we believe should be for career full-time and part-time employees . . . ." Finally, in response to question as to what the Local Union would do if its foregoing suspicions proved accurate, Wing replied that it would file grievances. Based upon the foregoing, I find that the General Counsel has established the necessity and the relevancy of the information, requested by Karen Wing. Postal Service, 337 NLRB at 822; Postal Service, 307 NLRB 429, 432 (1992); Ohio Power Co., supra.

With regard to Respondent's alleged unlawful, unreasonable delay from May 16 until on or about September 19 in providing the hiring dates for the casual employees listed in Wing's May 16 information request, Respondent conceded the slightly more than four month delay, which Deborah Perez attributed to a "miscommunication on our part." As to this, based upon the uncontroverted testimony of Perez and Michael Alaniz, I find that, upon receipt of Wing's information request for the hiring dates and work assignments of certain listed ISC Tour 2 casual employees, Perez submitted it to Respondent's labor relations department, which referred it back to Perez for retrieval of the requested information; that Perez assigned the matter to Alaniz; that, while compiling a hiring history for each of the listed casual employees, the latter interpreted Wing's request in a narrow and limited manner and, rather than seeking information pertaining to specific jobs, merely determined that each employee was hired in a casual position during each period of employment; that, without specific instructions to forward the material, which he compiled, to the Local Union, Alaniz gave the information to Perez; that the latter, believing Alaniz had provided the material to the Local Union, placed it in her office information request file; and that, only after the Local Union filed the instant unfair labor practice charge and after Respondent's labor relations department informed her that Respondent had

not yet complied with Wing's May 16 information request, did Perez send the foregoing information to the Local Union on September 19. Arguing that Respondent's delay was unreasonable, counsel for the General Counsel points out that the delay was in excess of four months, that the requested information was "fairly simple," and that Respondent easily could have compiled all the information in as little time as a week. Assuming a contrary view, counsel for Respondent contends that there is no evidence that the Local Union suffered any prejudiced by the delay herein and that, as Wing never contacted Perez regarding the material, her own "lack of diligence contributed to the delay. Having considered the matter, I find that, while Respondent's delay in providing the casual employees' dates of hire to the Local Union arguably may have been unreasonable, there is no record evidence that Respondent acted in a bad faith, dilatory manner. Moreover, there exist no pending grievances for which the requested information was essential or immediately required, the Local Union acted with deliberate speed in analyzing the information once it was provided by Respondent; and Wing never communicated with Perez as to the reason for the delay. In these circumstances, I agree with counsel that, in the absence of any prejudice to the Local Union caused by Respondent's delay, I shall recommend that this complaint allegation be dismissed. Union Carbide Corp., 275 NLRB 197, 201 (1985).[13]

The second allegation of the instant complaint, that Respondent has failed and refused to provide the Union with the requested work assignments of the listed casual employees, is more troubling for several reasons. First, while Wing testified that she was seeking job assignments for the entire time each casual had been employed by Respondent, except for the date, April 28, 2003 on the second page of the information request, there is no specified time period for the casual's work assignments, and Wing never contacted Perez in order to explain what she wanted. Second, in my view, it should have been obvious to Michael Alaniz, who was instructed to find information pertaining to the work assignments for certain casual employees and who admitted that a reader of the material, which he retrieved, could not have discerned the specific jobs performed by the listed casual employees, that compiling material, stating the listed casual employees were hired into casual employee job slots, was not responsive, and I agree with counsel for the General Counsel that he knew, or should have known that the Local Union desired information on the individuals' specific jobs. As to this, I found utterly incredible his explanation that Wing's request was "vague" and that he would have understood what she wanted had she used the phrase "specific work assignments." Even assuming Wing's request for work assignments was vague, as pointed out by counsel for the General Counsel, "it is well established that an employer . . . must request clarification and/or comply with the request to the extent it encompasses necessary and relevant information." Keauhou Beach Hotel, 298 NLRB 702 at 702 (1990). Finally, with regard to Alaniz, what was truly disturbing was his admission that he knew exactly where to go to retrieve the work assignment information requested by Wing-- Respondent's in-plant support department-- and deliberately, after utilizing it on a previous occasion, decided not to utilize that service for Wing's request. Third, as with Alaniz, given her admission that she should have referred Wing to another supervisor for work assignments, information not in her possession, I think Perez' protestation, that she also believed that the codes, signifying that each casual had been hired into a casual employee job slot, constituted a sufficient response to Wing's request for work assignment information, was strained and rather incredible. Next, I note that, upon receipt of the information provided by Perez and after concluding the material was insufficient to meet her request, Wing remained

[13] The quotation from the Board's decision in Sonat Marine, 279 NLRB 100 (1986), which appears on page 15 of counsel for the General Counsel's post-hearing brief, is misplaced. Thus, rather than to a nonmoratory delay the quotation refers to the belated presentation of requested information at the unfair labor practice hearing and the asserted lack of a remedy.

silent and never contacted Perez regarding what she perceived as missing from the information provided. In this regard, Wing admitted that her silence could have permitted Perez to believe that what information she provided was responsive to Wing's request. Finally, I am troubled by the actions of counsel for the General Counsel, acting on behalf of Region 20. In this regard, the General Counsel acts a prosecutor in unfair labor practice proceedings and, rather than for any interested party, is an advocate for the public interest. I think that, in her unsolicited November 6 letter, by informing counsel for Respondent that ". . . the Union is not satisfied that the information on work assignments has been provided" and stating "we suggest that as a minimum [Respondent] immediately supply the Union and the Region with the key to the codes listed in the columns marked "Job Slot ID" and Inst ID," counsel for the General Counsel clearly presented the appearance of acting as the agent for the Local Union. I further think that, if the Region viewed Perez' response to Wing's information request as insufficient, its obligation simply was to move to amend the complaint as it did.

In the above circumstances and having carefully considered the matter, notwithstanding Wing's inexplicable failure to communicate with Perez regarding the sufficiency of the latter's response to her information request, I believe that both Alaniz and Perez were, or should have been, aware that Respondent's submission of information to the Local Union on September 19 failed to include information on the listed casual employees' work assignments and that Alaniz, in particular, knew exactly where to locate the requested data and elected not to do so. Further, that the disputed information was belatedly supplied to the Local Union on the day of the unfair labor practice trial and was offered and received into the record does not preclude a finding that Respondent failed to provide the information to the Local Union. Bluntly put, making disputed information available to a labor organization on the day of an unfair labor practice hearing or offering such information as evidence at the hearing does not ".. . constitute an adequate substitute, either in law or fact, for direct and prompt compliance with a proper request for information by the bargaining representative." Sonat Marine, supra at 102. I further believe that the information, which was proffered on the morning of the instant hearing, was not sufficient to satisfy the Local Union's request for all of the listed casuals' work assignment information. In this regard, while, in her request, Wing failed to specify a time period encompassing the casual employees' job assignments and did set forth the date 4/38/03 next to the list of names, she testified that she desired all work assignments for the listed casuals at any time they worked for Respondent, and, in the material, which was furnished to the Local Union, Alaniz listed all periods of work for each casual. Notwithstanding the breadth of the data retrieved by Alaniz, in her proffer to the Local Union on November 19, Perez chose to disregard it and, instead, merely responded with the casual employees' work assignments as of April 28. I think that, at the least, if she was unclear as to the exact time period encompassed by Wing's information request, Perez' obligation was to have contacted Wing prior to proffering anything to the latter. Keauhou Beach Hotel, supra. In any event, given that Alaniz had listed all the hiring periods for each listed casual on the material which she provided to the Local Union in September, Perez should have acted consistently and listed all work assignments for the listed casual employees. Accordingly, I believe Respondent violated, and has continued to violate, Section 8(a)(1) and (5) of the Act by failing and refusing to provide to the Local Union complete information pertaining to the work assignments of certain casual employees.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over Respondent and this matter by virtue of Section 1209 of the PRA.

2. At all times material herein, the APWU and the Local Union have been labor organizations within the meaning of Section 2(5) of the Act, and the Local Union has been an

agent of the APWU within the meaning of Section 2(13) of the Act.

3. At all times material herein, the APWU has been the exclusive representative, within the meaning of Section 9(a) of the Act for Respondent's clerks, including distribution clerks, motor vehicle operators, and automotive mechanics, who are classified as either full-time regular, part-time employees assigned to regular schedules, and part-time employees assigned to flexible schedules, and excluding all other employees, managerial and professional employees, guards, and supervisors.

4. By failing and refusing to provide the Local Union with all necessary and relevant information, pertaining to the work assignments of certain Tour 2 casual employees at the ISC, Respondent engaged in acts and conduct violative of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

5. Unless specified herein, Respondent engaged in further unfair labor practices.

The Remedy

I have found that Respondent engaged in a serious unfair labor practice, within the meaning of Section 8(a)(1) and (5) of the Act, by failing and refusing to provide certain information, which had been requested by the Local Union. Therefore, in order to effectuate the purposes and policies of the Act, I shall recommend that Respondent be ordered to cease and desist from engaging in such conduct, to provide the requested information to the Local Union, and to post a notice, informing its employees of certain commitments pertaining to its unfair labor practice.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[14]

ORDER

The Respondent, United States Postal Service, its officers, agents, successors, and assigns, shall

1. Cease and desist from:

(a) Refusing to bargain with the APWU and the Local Union by failing and refusing to provide it with all relevant and necessary information, pertaining to work assignments for certain Tour 2 casual employees at the ISC;

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act

[14] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(a) Provide the Local Union with all information requested by the Local Union on May 16, 2003;

(b) Within 14 days after service by the Region, post at its International Service Center, located in Daly City, California, copies of the attached notice marked "Appendix."[15] Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 16, 2003;

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated: July 19, 2004

_____
Burton Litvack
Administrative Law Judge

[15] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

JD(SF)–56–04
San Francisco, CA

APPENDIX
NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT refuse to bargain with American Postal Workers Union, AFL-CIO, San Francisco Local, herein called the Local Union, by failing and refusing to provide it with all necessary and relevant information pertaining to the work assignments of certain Tour 2 casual employees at our International Service Center.

WE WII NOT, in any like or related manner, interfere with, restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL provide to the Local Union the work assignment data, which it requested in its May 16, 2003 information request.

United States Postal Service
(Employer)

Date _____ **By** _____
(Representative) **(Title)**

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

901 Market Street, Suite 400, San Francisco, CA 94103-1735
(415) 356-5130, Hours: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (415) 356-5139.